HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO. 3456 OF 2004

Between:

Maddala Tatu Naidu

..... Petitioner

AND

The Government of India,
Rep. By its Secretary,
Ministry of Home Affairs,
New Delhi & others

.....Respondents

:: O R D E R ::

Counsel for the petitioner : Shri V.V.L.N. Sarma

Counsel for respondent No.1 : Shri A. Rajashekar Reddy
Assistant Solicitor General

Dated: 12.12.2006

Truth is one of the basic values cherished by the Indian society for centuries. This value was also the hallmark of the system of administration of justice, which prevailed in pre-British era. The people used to tell the truth in the Courts irrespective of the consequences. But, after independence, the materialism has overshadowed the value-based system. A new creed of litigant has developed which does not have any respect for truth. The members of this category believe in achieving the objectives/goals irrespective of the means. In the Court process, they habitually suppress the facts, make misleading and even false statements and withhold material facts for the purpose of securing favourable orders. Most of the Courts in the country are flooded with litigation instituted by such unscrupulous elements and substantial time of the Courts, which could be devoted for deciding deserving cases, is lost in dealing with the cases instituted by unscrupulous elements in the society. To meet with this challenge, the Courts have evolved and will continue to evolve new mechanism. One of the salutary rules evolved by the Courts is that one who does not come to the Court with clean hands is not entitled to be

heard on merits of the case. To put it differently, a person, who touches the pure fountain of justice with tainted hands is not entitled to any relief.

I have made a mention of the above-noted principle because after perusing the pleadings of this case, the documents filed by the parties and hearing their advocates, I am convinced that the petitioner, who has prayed for issue of a mandamus to the respondents to sanction pension in his favour under Swatantrata Sainik Samman Pension Scheme, 1980 (for short 'the 1980 Scheme'), has not approached the Court with clean hands and is, therefore, not entitled to relief under Article 226 of the Constitution of India.

The petitioner claims to have suffered imprisonment in 1942. After promulgation of the first scheme framed by the Government of India in 1972 i.e. the year in which the country celebrated silver jubilee of independence, the petitioner made an application dated 23.10.1972 for grant of pension by being treated as a freedom fighter. His application was rejected on the ground that he does not satisfy the criteria laid down in the 1972 Scheme. This was conveyed to him vide letter dated 23.06.1973. After notification of the 1980 Scheme, the petitioner submitted application dated 09.12.1996 for grant of pension by being treated as a freedom fighter. Immediately thereafter,

he filed Writ Petition No.20451 of 1996, which was disposed of by this Court with a direction to the competent authority to decide his claim for pension.

In compliance of the Court's order, the competent authority reconsidered the petitioner's claim for grant of pension, but did not find merit in it. This was communicated to the petitioner vide letter No. 12/3000/73-FF.VI dated 15.06.1997 which was sent at his address in Anakapalle, Visakhapatnam District.

The petitioner did not disclose the factum of rejection of his claim by the Government of India vide communication dated 15.06.1997 to the Andhra Pradesh State Legal Services Authority and persuaded it to espouse his cause in the matter of grant of pension. At the initiation of the Andhra Pradesh State Legal Services Authority, Writ Petition No.146 of 1999 was filed for sanction of pension to the petitioner under the 1980 Scheme. The same was disposed of by another learned Single Judge with a direction to the respondents to consider the representation of the petitioner and pass appropriate order within a period of eight weeks.

In compliance of order dated 10.12.1999 passed in Writ Petition No.146 of 1999, the Government of India once again considered the petitioner's claim for grant of pension, but rejected the same. The decision of the Government of India was conveyed to the petitioner at his

address in Anakapalle vide letter dated 02.03.2000. The reasons assigned by the Government of India for not entertaining the petitioner's claim, as set out in paragraphs 2 to 6 of letter dated 02.03.2000, read as under:

> " 2) At the outset it is informed to you that all the persons who participated in freedom movement in someway or the other are not eligible for Samman Pension under the "Swatantrata Sainik Samman Pension Scheme, 1980" (the Scheme). Only such of the freedom fighters are eligible for Samman Pension who fulfil the conditions of the scheme, by furnishing the proof of claimed sufferings of the nature and in the manner specified in the Scheme itself.
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> 3) It is further informed to you that the claims of Samman Pension are considered by the Central Government only when these are duly verified and recommended by the State Governments/U.T. Administrations concerned along with the basis of such recommendations in accordance with the provisions of the Scheme. No action is, therefore, possible on the applications sent directly to the Central Government without routing through the State Government/U.T. Administration concerned. As per the Scheme, the verification and recommendation report is **mandatory** in view of the fact that the documents and other evidences of the claims are in the possession of the State Government/U.T. Administrations and not of the Central Government.
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> 4) As far as the eligibility conditions are

concerned, the Scheme, *inter-alia*, provides that a person who had suffered minimum **imprisonment** of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle is eligible for Samman Pension on fulfillment of the conditions of the Scheme **provided** he/she furnishes the following evidences:-

(a) Imprisonment/detention certificate from the concerned jail authority, District Magistrate, or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.

(b) In case records of the relevant period are not available, a Non-Availability of Record Certificate (NARC) from the concerned State/Union Territory Administration along with 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail sufferings of minimum one year and who were with the applicant in the jail. In case the certifier happens to be a sitting or Ex-MP/MLA, only one certificate in place of two is required. The NARC should not be general or vague and should conform to the instructions issued by the Government of India, Ministry of Home Affairs, vide Circular No.8/12/96-FF(P) dated 07.06.1996 which was reiterated on 2.11.98. The instruction, inter alia, requires the State Governments to issue NARC only after due verification from all the sources. The NARC can be treated valid only when it is furnished in the following manner:-

"All concerned authorities of the State

Government who could have relevant records in respect of the claim of the applicant have been consulted and it is confirmed that the official records of the relevant time are not available."

5) In your initial pension application dated 23.10.72 you had claimed participation in Salt Satyagraha Movement in 1932. You had stated therein that you were not tried due to your being a minor. The Government of Andhra Pradesh in their report dated 1.2.73 did not recommend your case for pension for the reason that you had not suffered any imprisonment. However, through a subsequent letter dated 18.7.91 the State Government forwarded your application along with co-prisoner certificate etc. whereby you had claimed jail sufferings for six months in connection with freedom movement. The case was considered but it was not found possible to accede to your request. You were duly informed of the rejection and the reasons thereof vide this Ministry's letter dated 30.10.91. In compliance of the High Court's order in W.P.No.20451/96, your case was considered in this Ministry and was rejected. Your were also informed of the rejection through a speaking order dated 13.6.1997.

6) You had not submitted any documentary evidence from official records i.e. jail certificate or in absence thereof a valid Non-Availability of Records Certificate (NARC) from the State Government, in support of your claimed jail suffering. In the absence of the acceptable and valid NARC from the State

> Government, the CPCs submitted by you are not acceptable evidences under the Scheme. The CPCs are acceptable only if the same are accompanied by valid NARC from State Government."

After four years of the third rejection of his claim for pension, the petitioner instituted the present petition for issue of a mandamus to the respondents to sanction pension in his favour under the 1980 Scheme. The drafting of the writ petition has been so articulated as to give an impression that despite two orders passed by the Court in Writ Petition Nos. 20451 of 1996 and 146 of 1999, the concerned authority has obstinately refrained from taking decision on the petitioner's claim for grant of pension.

In the first counter-affidavit filed on behalf of the Government of India on 25.04.2004 by Shri Virendra Kumar, Under Secretary in the Ministry of Home Affairs, Freedom Fighters Division, it has been clearly mentioned that the petitioner's claim for pension was rejected vide letter dated 23.06.1973 and again vide letters dated 13.06.1997 and 06.03.2000. Copies of letters dated 13.06.1997 and 06.03.2000 have also been placed on the record and marked as Annexures R.I and R.II. In the second affidavit filed on behalf of the Government of India by Shri J.C. Bain, Under Secretary in the Ministry of Home

Affairs, it has been averred that the petitioner's claim for grant of pension under the 1980 Scheme was not entertained because the documents produced by him viz. the certificates issued by Shri N.V. Rama Rao and Shri B. Satyanarayana Raju were found to be fabricated. Along with second counter-affidavit, copies of letters dated 30.09.1994 and 12.10.1994 written by Shri B. Satyanarayana Raju and Shri N.V. Rama Rao have been enclosed and marked as Annexures R.III and R.IV.

In a separate counter-affidavit filed on behalf of the State Government by Shri V. Veeresham, Deputy Secretary, Revenue Department, reference has been made to communication dated 06.03.2000 and letter dated 13.11.2006 sent by Government of Andhra Pradesh to the petitioner intimating him about the rejection of his claim for pension.

The petitioner has filed rejoinder/reply affidavits to the counters of respondent Nos. 1 to 3. The salient features of the rejoinder affidavit are;

1) that he is a freedom fighter;
2) that communications dated 13.06.1997 and 02.03.2000 were not received by him;
3) that he does not know anything about letters dated 30.09.1994 and 12.12.1994 written by Shri B. Satyanarayana Raju and Shri N.V. Rama Rao;

4) that both the persons had appeared before Mandal Revenue Officer, Anakapalle and gave statements supporting his cause as a freedom fighter.

Along with the counter-affidavit filed in response to the reply of respondent No.4, the petitioner has annexed two post cards dated 23.09.1994 (blue in colour) and 12.08.1997 (yellow in colour) both written by Shri B. Satyanarayana Raju and pleaded that these two letters should be treated as sufficient to negate the assertion contained in the counter-affidavit filed on behalf of the respondents that he has fabricated the certificates allegedly issued by the two persons.

I have heard learned counsel for the parties and carefully scrutinized the record. In my opinion, the writ petition is liable to be dismissed because the petitioner has not approached the Court with clean hands. In the original affidavit filed by him, the petitioner has conveniently suppressed the fact that his claim for pension had been rejected by the Government of India and he was informed of the said rejection vide letters dated 13.06.1997 and 02.03.2000. The assertion made in the rejoinder affidavit filed by the petitioner that he did not receive communications dated 13.06.1997 and 02.03.2000 lacks credibility and is liable to be ignored because both the letters were sent at the address, which the petitioner has given in the cause-title of the case and

there is no reason to believe that he did not receive the two communications. That apart, after filing of the counter-affidavit dated 25.04.2004 by Shri Veerender Kumar, in which the deponent has made a specific mention of the rejection of the petitioner's claim vide letters dated 23.06.1973, 13.06.1997 and 02.03.2000, the latter did not amend the writ petition to challenge the rejection of his claim for pension and in the absence of such a challenge with the corresponding prayer, the Court cannot issue a mandamus to the respondents to sanction pension to the petitioner under the 1980 Scheme. The petitioner has also not controverted the assertion contained in the counter-affidavit of Shri J.C. Bain that Shri B. Satyanarayana Raju and Shri N.V. Rama Rao had written letters dated 30.09.1994 and 12.10.1994 to Shri S.B. Chawan, the then Minister for Home Department clearly stating therein that the certificates produced by the petitioner are fabricated.

I am further of the view that in exercise of power under Article 226 of the Constitution of India, this Court cannot adjudicate the contentious issue relating to the genuineness or otherwise of the certificates allegedly given by the two freedom fighters and the contra letters written by them to the then Home Minister to the effect that the petitioner had fabricated their certificates.

With the above observations, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No.4555 of 2004 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

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12.12.2006